

By: Jackson

S.B. No. 1475

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Department of
Licensing and Regulation.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 51.001, Occupations Code, is amended to
read as follows:

Sec. 51.001. DEFINITIONS. In this chapter:

(1) "Advisory board" means a board, committee,
council, or other entity with multiple members that has as its
primary function advising the commission or department.

(2) "Commission" means the Texas Commission of
Licensing and Regulation.

(3) [~~(2)~~] "Department" means the Texas Department of
Licensing and Regulation.

(4) [~~(3)~~] "License" means a license, certificate,
registration, title, or permit issued by the department.

(5) [~~(4)~~] "License holder" means a person who holds a
license issued by the department.

(6) [~~(5)~~] "Respondent" means a person, regardless of
whether the person is a license holder, who is charged with
violating a law establishing a regulatory program administered by
the department or a rule adopted or order issued by the commission
or executive director.

(7) [~~(6)~~] "Sanction" means an action by the executive

1 director against a license holder or another person, including the
2 denial, suspension, or revocation of a license, the reprimand of a
3 license holder, or the placement of a license holder on probation.

4 SECTION 2. Section 51.202(a), Occupations Code, is amended
5 to read as follows:

6 (a) The commission shall set fees, in amounts reasonable and
7 necessary to cover the costs of administering the programs or
8 activities, for:

- 9 (1) licenses issued by the department;
10 (2) license renewals and late renewals;
11 (3) examinations;
12 (4) continuing education; and
13 (5) [~~4~~] any other program or activity administered
14 by the department for which a fee is authorized.

15 SECTION 3. Subchapter D, Chapter 51, Occupations Code, is
16 amended by adding Sections 51.209 and 51.210 to read as follows:

17 Sec. 51.209. APPOINTMENT OF ADVISORY BOARD MEMBERS.

18 (a) Except as otherwise provided by law, the presiding
19 officer of the commission, with the commission's approval, shall:

- 20 (1) appoint the members of the advisory board; and
21 (2) appoint a member of the advisory board to serve as
22 presiding officer of the advisory board.

23 (b) An advisory board member shall serve without
24 compensation but is entitled to reimbursement for actual and
25 necessary expenses incurred in performing advisory board
26 functions, subject to the General Appropriations Act.

27 Sec. 51.210. REMOVAL OF ADVISORY BOARD MEMBER. (a) An

1 advisory board member that was appointed by the presiding officer
2 of the commission with the commission's approval may be removed
3 from the advisory board by the presiding officer of the commission
4 with the commission's approval, on the grounds that the member:

5 (1) does not have at the time of taking office the
6 qualifications required by the law or rule authorizing appointment
7 of the member;

8 (2) does not maintain during service on the advisory
9 board the qualifications required by the law or rule authorizing
10 appointment of the member;

11 (3) cannot, because of illness or disability,
12 discharge the member's duties for a substantial part of the member's
13 term; or

14 (4) is absent from more than half of the regularly
15 scheduled advisory board meetings that the member is eligible to
16 attend during a calendar year without an excuse approved by a
17 majority vote of the advisory board.

18 (b) The validity of an action of an advisory board is not
19 affected by the fact that it is taken when a ground for removal of a
20 member exists.

21 SECTION 4. Section 51.351, Occupations Code, is amended to
22 read as follows:

23 Sec. 51.351. INSPECTIONS AND INVESTIGATIONS. (a) The
24 department may conduct inspections or investigations as necessary
25 to enforce the laws administered by the department.

26 (b) The department, during reasonable business hours, may:

27 (1) enter the business premises of a person regulated

1 by the department or a person suspected of being in violation of or
2 threatening to violate a law establishing a regulatory program
3 administered by the department or a rule or order of the commission
4 or executive director related to a regulatory program administered
5 by the department; and

6 (2) examine and copy records pertinent to the
7 inspection or investigation.

8 (c) A department employee may check the license,
9 registration, or endorsement of a person regulated by the Texas
10 State Board of Plumbing Examiners in accordance with the memorandum
11 of understanding under Section 1301.259 and report any
12 noncompliance to that agency.

13 (d) The department shall conduct joint investigations with
14 the Texas State Board of Plumbing Examiners as circumstances
15 require.

16 (e) The department may issue a subpoena as provided in this
17 subsection.

18 (1) The department may request and, if necessary,
19 compel by subpoena:

20 (A) the production for inspection and copying of
21 records, documents, and other evidence relevant to the
22 investigation of an alleged violation of this chapter, a law
23 establishing a regulatory program administered by the department,
24 or a rule adopted or order issued by the commission or executive
25 director; and

26 (B) the attendance of a witness for examination
27 under oath.

1 (2) A subpoena may be issued throughout the state and
2 may be served by any person designated by the commission or
3 executive director.

4 (3) The department, acting through the attorney
5 general, may bring an action to enforce a subpoena issued under this
6 subsection against a person who fails to comply with the subpoena.

7 (4) Venue for an action brought under this subsection
8 is in a district court in:

9 (A) Travis County; or

10 (B) any county in which the department may hold a
11 hearing.

12 (5) The court shall order compliance with the subpoena
13 if the court finds that good cause exists to issue the subpoena.

14 SECTION 5. Section 51.353, Occupations Code, is amended to
15 read as follows:

16 Sec. 51.353. LICENSE DENIAL; ADMINISTRATIVE SANCTIONS.

17 (a) The commission shall revoke, suspend, deny an application for,
18 or refuse to renew a license or shall reprimand a license holder for
19 a violation of this chapter, a law establishing a regulatory
20 program administered by the department, or a rule or order of the
21 commission or executive director.

22 (b) The commission may probate the suspension of a [~~place on~~
23 ~~probation a person whose~~] license [~~is suspended~~]. If a license
24 suspension is probated, the commission may require the person to:

25 (1) report regularly to the department on matters that
26 are the basis of the probation;

27 (2) limit practice to the areas prescribed by the

commission; or

(3) continue or renew professional education until the person attains a degree of skill satisfactory to the commission in those areas that are the basis for the probation.

SECTION 6. Subchapter G, Chapter 51, Occupations Code, is amended by adding Sections 51.355, 51.356, and 51.357 to read as follows:

Sec. 51.355. CEASE AND DESIST ORDERS. The executive director may issue a cease and desist order if the executive director determines that the action is necessary to prevent a violation of:

(1) this chapter;

(2) a law establishing a regulatory program administered by the department; or

(3) a rule adopted or order issued by the commission or executive director.

Sec. 51.356. EMERGENCY ORDERS. (a) The executive director may issue an emergency order to suspend or revoke a license or to cease operation of an unsafe facility or unsafe equipment that is subject to regulation by the department, if the executive director determines that an emergency exists requiring immediate action to protect the public health and safety.

(b) The executive director may issue the emergency order with or without notice and hearing as the executive director considers practicable under the circumstances.

(c) If an emergency order is issued under this section without a hearing, the executive director shall set the time and

1 place for a hearing conducted by the State Office of Administrative
2 Hearings to affirm, modify, or set aside the emergency order not
3 later than the 10th day after the date the order was issued. The
4 order shall be affirmed to the extent that reasonable cause existed
5 to issue the order.

6 (d) The commission by rule may prescribe procedures for the
7 determination and appeal of an emergency order under this section,
8 including a rule allowing the commission to affirm, modify, or set
9 aside a decision made by the State Office of Administrative
10 Hearings under Subsection (c).

11 (e) A proceeding under this section is a contested case
12 under Chapter 2001, Government Code.

13 Sec. 51.357. DEFERRED ADJUDICATION; LICENSE SUSPENSION,
14 REVOCATION, OR DENIAL OR REFUSAL TO RENEW LICENSE. (a) The
15 commission may suspend, revoke, deny an application for, or refuse
16 to renew a license if the commission determines that a deferred
17 adjudication makes the person holding or seeking the license unfit
18 for the license.

19 (b) In making a determination under subsection (a), the
20 commission shall consider the factors set forth in Sections 53.022
21 and 53.023 and the guidelines issued by the department under
22 Section 53.025.

23 SECTION 7. Subchapter H, Chapter 51, Occupations Code, is
24 amended by adding Sections 51.407 and 51.408 to read as follows:

25 Sec. 51.407. TEMPORARY LICENSE. (a) The commission by
26 rule may provide for the issuance of a temporary license to an
27 applicant who:

1 (1) submits to the executive director an application
2 on a form prescribed by the executive director;

3 (2) meets preliminary qualifications established by
4 commission rule; and

5 (3) pays the required fees.

6 (b) A temporary license expires on the 21st day after the
7 date of issuance and may not be renewed.

8 (c) A temporary license holder is subject to:

9 (1) this chapter;

10 (2) any law applicable to the activity for which the
11 license is required; and

12 (3) any rule of the commission or the executive
13 director applicable to the license.

14 Sec. 51.408. EMERGENCY LICENSE. (a) The executive
15 director may issue an emergency license to a person who meets
16 eligibility requirements provided by:

17 (1) a law establishing a regulatory program
18 administered by the department; or

19 (2) a rule adopted to implement this section.

20 (b) The license expires on the date indicated by the
21 executive director, but may not exceed the 90th day after the date
22 of issuance.

23 (c) The emergency license holder may engage in the
24 activities authorized by the type of license only:

25 (1) during a time declared as a state of disaster and
26 the following recovery period; and

27 (2) in an area designated as a disaster area pursuant

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1 to Chapter 418, Government Code.

2 SECTION 8. This Act takes effect September 1, 2007.